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IN THE SUPREME COURT
OF THE STATE OF UTAH

ELAINE DEVAULT,

Plaintiff and Appellant,

vs.

ANTHONY MITCHELL, in his
capacity as Director of the
Utah Department of Social
Services,

Case No. 15532

Defendant and Respondent.

PLAINTIFF'S BRIEF

Appeal from a decision of the Third Judicial District
Court in and for Salt Lake County, State of Utah,
The Honorable David B. Dee, Judge.

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FILED

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IN THE SUPREME COURT
OF THE STATE OF UTAH

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ELAINE DEVAULT,

Plaintiff and Appellant,

vs.

Case No. 15532

ANTHONY MITCHELL,

Defendant and Respondent.

--oo0oo--

PLAINTIFF'S BRIEF

STATEMENT OF THE CASE

Appellant applied to the Utah Department of Social Services (UDSS) for General Assistance because she was without income or resources to support herself. Assistance was denied because UDSS concluded Appellant was not a separate "economic unit" from the persons with whom she lived. Appellant contends that this decision violates UDSS regulations, a state statute, and the Due Process and Equal Protection Clauses of the Utah and United States Constitutions.

DISPOSITION BELOW

The Third Judicial District Court in and for Salt Lake County affirmed the decision of UDSS to deny assistance after hearing argument on Appellant's Motion for Summary Judgment and Appellant's Motion to Dismiss.

RELIEF SOUGHT ON APPEAL

Appellant asks that this Court reverse the decision of the Third Judicial District Court and rule that Appellant was entitled to assistance.

STATEMENT OF FACTS

Appellant is a 52 year old divorced woman who applied to UDSS for General Assistance on February 9, 1977, because she was without income or resources. At that time she paid her last \$50.00 for room and board. Eight other persons lived in the same house as Appellant: her adult daughter, her granddaughter, her ex-husband, a friend, and the friend's minor children. Appellant's application for assistance was denied. An administrative hearing decision affirmed the initial denial.

Appellant was denied assistance because of her relationship to the other persons in the house where she resided. (Hearing Decision, Exhibit A) This finding led the Hearing Examiner to conclude that Appellant was not a separate "economic unit" from the rest of the persons in the house. Therefore, he counted the income and resources of all nine persons in the house in determining Appellant's eligibility. The evidence concerning whether the income and resources of all persons in the house were available to Appellant was: (1) a receipt and uncontradicted testimony that Appellant paid her last \$50.00 to live in the house as a boarder; (2) uncontradicted testimony that she was unable to make any additional payments or to move elsewhere because she had no income or resources; and (3) uncontradicted testimony that room and board

beyond what Appellant had paid constituted a loan to Appellant that she was obligated to repay when she had the means. The Hearing Examiner found: "in considering the relationship to her ex-husband and daughter, that the claimant could not be classified as receiving room and board and being a separate economic unit." (Exhibit A) The Hearing Examiner made no Findings of Fact that the income of any other person was available to Appellant for her support.

ARGUMENT

POINT I

UDSS MISINTERPRETED ITS REGULATIONS TO DENY ASSISTANCE TO APPELLANT, WHO ESTABLISHED HER NEED.

The applicable UDSS regulations are found in Volume II of: Assistance Payments Administration Manual. They provide in pertinent part:

\$262.3 General Assistance Household:
Any adults and emancipated persons living together in common quarters (except roomers, boarders and live-in attendants) shall be considered as a household providing they live as an economic unit.

. . .

Economic Unit: One or more persons living together in common quarters, purchasing and preparing food together, with the income of each individual being available to the entire group for their support, care and maintenance.

The elements in determining eligibility are:

- (1) Living in common quarters (with boarders excepted);
- (2) Purchasing and preparing food together; and
- (3) The income of each individual being available to the entire group for their support, care, and maintenance.

The third element raises the key issue. Simply stated the issue is whether the income of the other persons in the household was available for Appellant's support. The evidence introduced by Appellant was a receipt for her payment of room and board and her testimony that she paid the last money she had for room and board and then become indebted to her daughter for the additional period after she ran out of funds. Appellant's evidence was not contradicted by any other evidence. Appellee disregarded the uncontradicted evidence that Appellant was a boarder who paid for her room and board until she ran out of money and who then became indebted for subsequent room and board.

UDSS insists that because Appellant received some of her room and board on credit instead of for cash (which she did not have) "it is evident ... that the incomes of other family or household members were available for [Appellant's] living needs.... It is obvious that other members of the household were providing her needs." (Defendant's Memorandum, R. 28) Indeed it is obvious that someone provided for Appellant's needs during her time of need. She was destitute and received no assistance from UDSS. Surely UDSS does not require a person to starve and live in the

street for a certain period of time to prove his or her worthiness for assistance.

Catch 22 snared Appellant. Without assistance she could not continue to pay her bill; since she could not continue to pay her bill, she was not eligible for assistance. If she had moved to the Salvation Army shelter home for a few days, she would have been eligible for UDSS assistance. Or would UDSS also deny assistance to a person receiving temporary food and shelter from such a charity on the basis that the person's needs were being provided for?

POINT II

THE HEARING DECISION WAS NOT BASED UPON THE FACTS, TESTIMONY, AND EVIDENCE PRESENTED DURING THE HEARING AND IGNORED UNCONTRADICTED EVIDENCE IN VIOLATION OF UDSS REGULATIONS AND STATE LAW.

UDSS regulations required that the Hearing Examiner's Recommendation and the Hearing Decision be based upon the facts, testimony, and evidence presented during the hearing and that the Hearing Decision summarize the evidence relied upon. Manual, §§150.8, 150.9. In addition, it is the rule in Utah that uncontradicted evidence is generally conclusive. This Court stated the rule as follows in American Scale Mfg. Co. vs. Zee, 235 P.2d 364 (1951):

The general rule as to the effect of positive uncontradicted evidence is ... "Where the testimony of a witness is uncontradicted and not inherently improbable, and there are no circumstances tending to raise doubt of its truth, the facts so proven should be taken as conclusively established and verdict directed or decision entered accordingly."

Upon these rules the Hearing Decision is deficient on three grounds: (1) Appellant introduced uncontradicted evidence in the form of a rent receipt and testimony that she was a boarder (Exhibit A); (2) Appellant introduced uncontradicted testimony that the other persons in the house did not make their income or resources available for her support (Exhibit A); and (3) Appellant introduced uncontradicted testimony that room and board beyond what she had paid for was a loan. (Exhibit A)

POINT III

UDSS DID NOT DETERMINE APPELLANT'S ELIGIBILITY
AT THE CORRECT TIME, NAMELY, AT THE DATE OF
APPLICATION.

Appellant admits that she was only able to pay for her room and board for a limited period. She made that payment with her last money and applied for assistance because she was destitute. Eligibility is determined as of the date of application. (R. 29). As of that date Appellant was a separate economic unit, even according to the interpretation of UDSS. It was only after Appellant was allegedly no longer paying her own way that UDSS found her to be ineligible. UDSS did not determine her eligibility as of the date of application. For this reason alone the decision of UDSS is wrong and must be reversed.

POINT IV

DENIAL OF GENERAL ASSISTANCE TO APPELLANT, WHO
WAS DESTITUTE, VIOLATED THE UTAH PUBLIC ASSISTANCE
ACT, WHICH PROVIDES FOR ASSISTANCE TO PERSONS IN
NEED.

U.C.A. §55-15a-1 states:

It is the purpose of this act to provide assistance to any person in Utah in need. A person is in need and entitled to assistance if sufficient resources are not available for his use within the limitations set forth herein and who otherwise qualifies.

U.C.A. §55-15a-17 states:

Assistance shall be provided under this act for individuals who qualify as follows: ... (2) Persons in need that are not receiving direct money grants as aid to families with dependant children, or supplemental security income. Such assistance may be designated general assistance. ...

The inability of Appellant to maintain a separate residence due to her lack of income and resources should not be a basis for denial of General Assistance. Appellant demonstrated her need; she demonstrated that she did not have sufficient resources available to meet her need; she could not even meet the cost of her own shelter, much less the other basic needs referred to in UDSS regulations, such as food, clothing, medical treatment, personal care, household supplies, and transportation.

Appellant recognizes that UDSS has the power to make regulations to implement the statutory provisions. It is axiomatic, however, that the regulations must not be contrary to the purpose of the Act. 1 Am.Jur.2d, Administrative Law §72. In this case, UDSS would deny assistance to an otherwise needy person who had to find a way to survive while seeking assistance from UDSS.

To argue, as UDSS does, that it has no obligation "to provide someone with the means to become a separate economic unit" (R. 30) is specious. First, at the date of application Appellant was

a separate economic unit. (See Point III above.) Second, the question is need, not whether Appellant is or should be allowed to become a separate economic unit. Appellant should not be penalized for managing to survive while seeking assistance.

POINT V

THE RELATION OF APPELLANT TO OTHERS IN THE
HOUSE IS IRRELEVANT IN DETERMINING APPELLANT'S
NEED.

The only possible significance of the relation of persons in a house would be to determine an obligation of support. Support obligations exist, however, whether or not the applicant for assistance resides with such an obligor. And UDSS has legal recourse to recover from the obligor any assistance provided a needy person. The question when one applies for public assistance is, "Is the applicant needy?" and not, "To whom is the applicant related?" King vs. Smith, 392 U.S. 309 (1968).

Nevertheless, it is clear that the Hearing Examiner based his decision on the relationship of Appellant to others in the house. He states, "It would be the opinion of the Hearing Examiner that in considering the relationship to her ex-husband and daughter, that the claimant could not be classified as receiving room and board, and being a separate economic unit." (Exhibit A) The relationships and the questions of Appellant's status as a boarder or her economic independence have no logical connection unless the Hearing Examiner is making certain assumptions as a result of the relationships. It seems that he must be assuming that because of

the relationships, Appellant is part of an extended family that is able and willing to support her. There is no evidence to support such an assumption; in fact, Appellant's evidence contradicted such an assumption.

POINT VI

UDSS'S DETERMINATION CONTRARY TO UNCONTRADICTED EVIDENCE CREATED AN IRREBUTTABLE PRESUMPTION IN VIOLATION OF DUE PROCESS.

By assuming that Appellant had the income of others in the house available for her support, contrary to the facts, testimony and evidence presented at the hearing, UDSS has violated the Due Process Clauses of the Utah Constitution and the Fourteenth Amendment to the United States Constitution. An irrebuttable presumption was created that Appellant's adult daughter and ex-husband provided her with support merely because of their relationship. Yet it has long been established that a governmental agency cannot deprive a person of such a substantial entitlement as the necessities of life on the basis of facts conclusively presumed true, unless they are necessarily and universally true. Cleveland Board of Education vs. LaFleur, 414 U.S. 632 (1974); Vlandis vs. Kline, 412 U.S. 414 (1973); Stanley vs. Illinois, 405 U.S. 645 (1972); Heiner vs. Donnan, 285 U.S. 312 (1932).

Under this line of cases, the principle of due process prohibits a State agency from impinging upon an individual's entitlement on the basis of facts that the agency presumes, without providing the individual an opportunity to show that the

facts are not true in her situation. Such an opportunity would have been provided in this case had UDSS adhered to its regulations and made its decision based on the evidence. Instead, an irrebuttable presumption that the income of others was available was applied by UDSS against Appellant in violation of her constitutional rights.

Courts have been particularly critical of welfare regulations that presume the availability of income, striking down many of them. See Van Lare vs. Hurly, 421 U.S. 338 (1975); U.S. Department of Agriculture vs. Murry, 413 U.S. 508 (1973); Lewis vs. Martin, 397 U.S. 552 (1970); King vs. Smith, 392 U.S. 309 (1968).

When the established facts are contrary to the presumption, the presumption is obviously impermissible. Appellant testified at the hearing that she received no support from the other members of the house. UDSS presented no evidence whatsoever to rebut this testimony. Thus the established fact in this case is that the other persons' income and resources were not available to Appellant. But UDSS failed to determine factually whether Appellant was a "person in need"; instead it presumed that she was not because of her relationship to others in the house.

POINT VII

THE DENIAL OF GENERAL ASSISTANCE ON THE BASIS
OF INABILITY TO MAINTAIN A SEPARATE RESIDENCE
VIOLATES EQUAL PROTECTION.

The denial of assistance creates two classes of similarly situated needy individuals: (1) those who are otherwise eligible

for General Assistance, are financially able to maintain a separate residence, and are not denied General Assistance; and (2) those who are otherwise eligible for General Assistance, but are not financially able to maintain a separate residence, and are denied General Assistance. Such a denial is contrary to the purpose of the Utah Public Assistance Act to provide assistance to persons in need. Surely, an individual who is unable to provide herself with basic shelter is a person in need. The classification discriminates on a basis that is without rational relation to the purpose of the General Assistance program and without any legitimate State purpose, in violation of the Equal Protection Clauses of the Utah Constitution and the Fourteenth Amendment to the United States Constitution. Dandridge vs. Williams, 397 U.S. 471 (1971).

CONCLUSION

For the reasons cited above, Appellant requests that this Court reverse the decision below and rule that Appellant was entitled to assistance at the date of application.

Respectfully submitted this 20 day of February, 1978.

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CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing Plaintiff's Brief to Paul M. Tinker, Assistant Attorney General, State Capitol Building, Salt Lake City, Utah 84114, this 2nd day of February, 1978.

Larry Bolling

Hearing Held March 15, 1977, Ogden, Utah
Neal Bernson, Hearing Examiner

I. ISSUE:

The claimant requested a Hearing on March 3, 1977, to appeal a decision by the District II (A) Assistance Payments Administration Office to deny the claimant's application for General Assistance.

Position of the District Office:

The district office representative stated that the claimant applied for General Assistance on February 9, 1977. On her application for Food Stamps she declared that she was residing with three other families. This included her ex-husband, her daughter and a friend. In considering Volume II, Section 263.3, all members of the household, and income, must be considered in determining the claimant's eligibility for General Assistance. To be eligible for General Assistance, one must be a separate economic unit. In considering the claimant's circumstances, she is not a separate economic unit, as she is relying on the income and resources of the other members of the family. Therefore, the claimant's application for General Assistance was denied.

Position of the Claimant:

The claimant's representative stated that the claimant has recently separated from her husband of approximately two years, and as she was unable to afford a place of her own, has moved back into the home of her daughter and ex-husband. She has moved in with her daughter as a boarder, and will pay rent on a regular basis, if approved for General Assistance. The claimant is a separate economic unit, but until she has regular income, it is difficult to prove her separate economic contention. The claimant, however, does not have any other person of the household paying for any personal care, clothing, household supplies or transportation needs. Her room and board are paid for in her rent, and the claimant has been able to make one payment. As the claimant exists separately, and economically apart from the rest of the members of the household, the claimant's representative contends that the denial is incorrect.

II. FINDINGS OF FACT:

In considering the circumstances of the claimant, she is presently residing with her daughter, her ex-husband, and a friend of the family. In considering the children of the claimant's daughter and friend, the combined household consists of nine people. Volume II, Section 262.3 states:

"Any adults and emancipated persons living together in common quarters (except roomers, boarders and live-in attendants) shall be considered as a household providing they live as an economic unit."

The claimant's representative contends that the claimant will actually be paying room and board, and is a separate economic unit. It would be the opinion of the Hearing Examiner that in considering the relationship to her ex-husband and

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II. FINDINGS OF FACT: (continued)

daughter, that the claimant could not be classified as receiving room and board and being a separate economic unit. All members of the family are residing in the same household, all indirectly related except the one friend and children, meals are eaten together, and the entire household therefore would be an economic unit. Therefore, under these circumstances the claimant in her own behalf is a separate economic unit; and, therefore, is not eligible for General Assistance.

III. RECOMMENDATION:

I recommend that the decision by the District II (A) Assistance Payments Administration Office to deny the claimant's General Assistance application be sustained.

IV. DECISION:

The Hearing Examiner's recommendation is hereby sustained in that the claimant's application for General Assistance was appropriately denied due to not being a separate economic unit. See Volume II, Section 262.3.